

Application No.: 10/723,880
Filing Date: 11/26/2003

Examiner: Kien T.Nguyen
Art Unit: 3712

REMARKS

Claims 1 through 6, 10 and 11 are rejected under 35 U.S.C. § 102(b) as being anticipated by Hoffman, U.S. Patent No. 5,529,539.

Independent Claim 1 requires, *inter alia*, a swing that is suspended by at least two chains. The term “chains” is defined in specification as an “*elongated and flexible member* having sufficient strength from which to suspend a swing, which includes both chain and lines, such as nylon lines or other *flexible* lines that could be used to mount a swing.” Specification page 3, lines 19-22; emphasis added. The Claims must be interpreted according to this definition. This definition does not include solid bars.

Hoffman discloses a swing that is suspended by two upright bars 8. According to the specification of Hoffman, the bars are not chains, but rather are “upright vertical solid bars spaced in width as that of the seat.” See, Hoffman Abstract.

Anticipation of a claim under 35 U.S.C. §102 can only be found if the prior art reference discloses every element of the claim. *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed.Cir.1994). Anticipation requires the presence, in a single prior art disclosure, of all elements of a claimed invention arranged as in the claim; a prior art disclosure that “almost” meets the claim is not anticipation. *Structural Rubber Products Co. v. Park Rubber Co.*, 749 F.2d 707, 716 (Fed.Cir.1984). A 102(b) reference must contain a

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disclosure which would enable someone to practice the invention as claimed. *Reading & Bates Const. v. Baker Energy Res Energy Res.*, 748 F.2d 645 (Fed.Cir.1984).

Hoffman does not anticipate Claim 1, or Claims 2, 4, 5, 6, 10 and 11 that depend from Claim 1. The present invention requires chains that are flexible. *Hoffman* does not teach chains, but rather, teaches suspending the swing by vertical continuous upright bars 8 that are solid, and not flexible. The rejection of these Claims under 35 U.S.C. §102 as being anticipate by *Hoffman* is due to be withdrawn.

Claim 10 is amended hereby to require that the bench-type swing seats at least two people. The amendment is supported by the specification on page 3, lines 16-17, wherein it is stated that "(t)he bench-type swing has room for multiple occupants." *Hoffman* does not teach a bench type swing that seats at least two people, but rather, teaches a single seater. The use of bench type swing allows for the use of a larger sail, and the larger sail generates more breeze, even if only one person is sitting in the bench type swing.

Claims 1 and 3 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Babcock *et al.*, U.S. Patent No. 5,938,283. Babcock teaches a swing that is suspended from members 12, 14, 16 and 18. As stated in the specification of Babcock, members 12, 14, 16 and 18 are "tubular framing members" that are "formed from expanded steel."

Babcock et al., Column 3, lines 58-60.

Babcock teaches an alternate embodiment, as shown in Figure 5. In the embodiment shown in Figure 5, the swing support framework is formed of wood. A number of chains 84 support the assembly. However, in the embodiment shown in Figure 5, there is no canopy or other structure that can be considered to be a sail. Accordingly, *Babcock, et al.* do not meet the limitation of Claim 1, which requires chains that are flexible and a sail that is disposed between the chains. The fact that *Babcock et al.* teach a canopy in the embodiment shown in Figure 1, but do not teach a canopy in the embodiment of Figure 5, substantially teaches away from the use of a sail in combination with chains. *Babcock et al.* do not anticipate the invention claimed in Claims 1 and 3 since they do not teach a single embodiment having all of the elements of the claimed invention.

Further, *Babcock et al.* in the embodiment shown in Figure 1 do not show a sail that is disposed between swing support members 16 and 18. It is respectfully submitted that the Office Action is in error when it says that the swing is “suspended by members (30).” Member is 30 is part of the support stanchion that supports the entire swing from the ground, as do stanchions 24, 26 and 28 of *Babcock et al.* *Babcock et al.*, Column 2, lines 64-67.

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The rejection of Claims 1 and 3 under 35 U.S.C. § 102(b) as being anticipated by Babcock *et al.* is due to be withdrawn.

Dependent Claim 12 is added by way of amendment. Claim 12 depends from Claim 1. Claim 1 requires a bench-type swing, wherein the bench-type swing provides seating for at least two people, and the sail is laterally disposed between the chains and above the swing and below a member from which at least two chains are suspended, wherein the sail extends horizontally across substantially an entire distance between the chains. This structure is not taught by the cited prior art.

Dependent Claim 13 is added hereby, and depends from Claim 12. Claim 13 requires that the large plane of the sail is comprised of fabric.

Dependent Claims 14 and 15 are hereby, and depend from Claims 12 and 13, respectively. Claims 14 and 15 require that the sail is attached to the two chains by at least two lines.

The structure as defined by Claims 13, 14 and 15 is not found in the prior art of record.

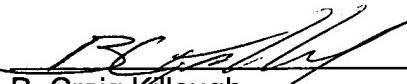
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It is respectfully submitted that Claims 1 through 15 are condition for allowance.

Review and allowance at the earliest possible date is requested.

Respectfully submitted,


B. Craig Killough
Attorney for Applicant
Registration Number 30,398
P.O. Drawer H
Charleston, SC 29402-0197
(843) 577-7700

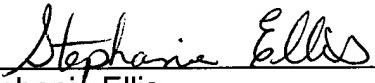
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CERTIFICATE OF MAILING

I hereby certify that this Response to Official Action Dated August 11, 2004, Petition for Extension of Time under 1.136(a), Extension Fee Check in the amount of \$60, and Post Card are being deposited with the United States Postal Service, with sufficient postage attached thereto, in an envelope addressed to: Mail Stop Amendment, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 10th day of December, 2004.



Stephanie Ellis
Assistant to B. CRAIG KILLOUGH
Attorney for Applicant
P.O. Drawer H
Charleston, SC 29402-0197
(843) 577-7700